

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, *ex rel.* W.A. DREW
EDMONDSON, in his capacity as ATTORNEY
GENERAL OF THE STATE OF OKLAHOMA,
et al.

Plaintiffs

vs.

TYSON FOODS, INC., *et al.*

Defendants

05-CV-00329-GKF-SAJ

AMENDED RESPONSES OF CAL-MAINE FARMS, INC.
TO PLAINTIFF'S APRIL 20, 2007 REQUESTS
FOR ADMISSIONS AND REQUEST FOR PRODUCTION

Cal-Maine Farms, Inc. ("Cal-Maine") submits its amended responses to the plaintiff's

April 20, 2007, admissions requests as follows:

Responses to Requests for Admissions

Objections:

1. Objection is made to the plaintiff's misuse of the word, "waste", to refer to chicken manure. Chicken manure is not a waste product. It is, instead, a valuable agricultural fertilizer. The plaintiff's misuse of the word, "waste", in the context of this litigation, is tendentious and misleading.

2. Objection is made to the plaintiff's definition of "poultry waste". Beyond the misuse of the word, "waste", the plaintiff's definition includes the phrase, "any other waste associated with the confinement of poultry from a poultry feeding or growing operation." This phrase confounds rather than defines. The definition is vague and ambiguous. Cal-Maine cannot intuit any intended meaning other than the stated excrement, carcasses, and feed wastes.

3. Objection is made to the plaintiff's definition of "your poultry growing operations." The plaintiff's definition is incorrect and, in the context of this litigation, is tendentious and misleading. The plaintiff's definition incorrectly attempts to define operations owned by independent contract growers as operations belonging to Cal-Maine.

4. Objection is made to the plaintiff's definition of "phosphorus." The plaintiff's definition of phosphorus includes phosphate and phosphorus compounds. This definition is incorrect and, in the context of this litigation, is tendentious and misleading. Phosphorus is a thing different from phosphate or phosphorus compounds. It has a different molecular structure than phosphate or phosphorus compounds. These responses **do not** incorporate the plaintiff's definition of phosphorus. These responses will accord the word, "phosphorus", its proper usage, *i.e.*, to signify that element bearing Atomic number 15.

5. Objection is made to the plaintiff's definition of "run-off". The plaintiff defines "run-off" as a "release". The word, "release", is a CERCLA term of art defined by 42 U.S.C. §9601(22). Subsection (d) of that section excludes "the normal application of fertilizer" from the definition of "release". Accordingly, the use of chicken manure as fertilizer cannot, by definition, result in a "release". The plaintiff's definition of "run-off" is incorrect and, in the context of this litigation, is tendentious and misleading.

6. Objection is made to the plaintiff's definition of "pathogens." The plaintiff's definition includes microorganisms which are not necessarily harmful or pathogenic. The plaintiff's definition is incorrect, overbroad, and misleading.

7. Objection is made to the plaintiff's use of the phrase "hazardous substances within the meaning of CERCLA." That phrase is vague and ambiguous in the context of this action. The First Amended Complaint identifies the substances which are the subject of this action. Those substances listed in the First Amended Complaint include substances which are not "hazardous substances within the meaning of CERCLA", but do not include all "hazardous substances within the meaning of CERCLA." To the extent these requests seek responses regarding substances which have not been identified as substances of concern for purposes of this action, the requests are overbroad. In addition, there is a substantial dispute among the parties regarding what substances or constituents constitute "hazardous substances" for purposes of this CERCLA action.

Responses to Requests For Admissions

Request No. 1: Admit that poultry waste from one or more of your poultry growing operations has been spread on land located within the Illinois River Watershed.

Response:

Denied.

Request No. 2: Admit that poultry waste from one or more of your poultry growing operations that has been spread on land located within the Illinois River Watershed contains one or more "hazardous substances" within the meaning of CERCLA.

Response:

Denied.

Request No. 3: Admit that poultry waste from one or more of your poultry growing operations that has been spread on land located within the Illinois River Watershed contains pathogens.

Response:

Denied.

Request No. 4: Admit that poultry waste from one or more of your poultry growing operations that has been spread on land located within the Illinois River Watershed contains phosphorus.

Response:

Denied, and denied for phosphates and/or phosphorus compounds.

Request No. 5: Admit that poultry waste from one or more of your poultry growing operations that has been spread on land located within the Illinois River Watershed has run-off from the land upon which it has been applied.

Response:

Denied.

Request No. 6: Admit that poultry waste from one or more of your poultry growing operations that has been spread on land located within the Oklahoma portion of the Illinois River Watershed has run-off from the land upon which it has been applied.

Response:

Denied.

Request No. 7: Admit that one or more “hazardous substances” within the meaning of CERCLA contained in poultry waste from one or more of your poultry growing

operations that has been spread on land located within the Illinois River Watershed has run-off from the land upon which it has been applied.

Response:

Denied.

Request No. 8: Admit that pathogens contained in poultry waste from one or more of your poultry growing operations that has been spread on land located within the Illinois River Watershed has run-off from the land upon which it has been applied.

Response:

Denied.

Request No. 9: Admit that phosphorus contained in poultry waste from one or more of your poultry growing operations that has been spread on land located within the Illinois River Watershed has run-off from the land upon which it has been applied.

Response:

Denied.

Request No. 10: Admit that poultry waste contributes a greater amount of phosphorus to the portion of the Illinois River located in Oklahoma than waste water treatment plants, cattle manure, manure from wildlife, septic systems, commercial fertilizers and stream bank erosion combined.

Response:

Denied. To the extent the request asks about phosphate and/or phosphorus compounds, objection is made that the request is overbroad and is not calculated to lead to the discovery of admissible evidence.

Request No. 11: Admit that poultry waste contributes a greater amount of pathogens to the portion of the Illinois River located in Oklahoma than waste water treatment plants, cattle manure, manure from wildlife and septic systems combined.

Response:

Denied. Cal-Maine does not know the volume of chicken litter or chicken manure generated, stored, or spread within the IRW, nor does it know the quantity of pathogens, if any, generated by water treatment plants, cattle manure, manure from wildlife, and septic systems.

Request No. 12: Admit that poultry waste contributes a greater amount of phosphorus to Lake Tenkiller than waste water treatment plants, cattle manure, manure from wildlife, septic systems, commercial fertilizers and stream bank erosion combined.

Response:

Denied. To the extent the request asks about phosphate and/or phosphorus compounds, objection is made that the request is overbroad and is not calculated to lead to the discovery of admissible evidence. In addition, Cal-Maine does not know the volume of chicken litter or chicken manure generated, stored, or spread within the IRW, nor does it know the amount of phosphorus, if any, generated by water treatment plants, cattle manure, manure from wildlife, septic systems, commercial fertilizers, and stream bank erosion.

Request to No. 13: Admit that one or more of your poultry growing operations located in the Oklahoma portion of the Illinois River Watershed is not in compliance with its animal waste management plan.

Response:

Denied.

Response to Request for Production

Request No. 1: For each of the above Requests to Admit that you deny, please produce any and all documents in your possession, custody and control that support your denial (to the extent you have not already produced them to the State in this litigation).

Response:

None.

Dated: July 6, 2007

CAL-MAINE FARMS, INC.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 6th day of July, 2007, I electronically transmitted the foregoing document to the following:

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